

DATE SUBMITTED

01-29-09

COUNCIL ACTION (x)

SUBMITTED BY

Executive Director

PUBLIC HEARING REQUIRED ()

RESOLUTION ()

ORDINANCE 1ST READING ()ORDINANCE 2ND READING ()

CITY CLERK'S INITIALS ()

DATE ACTION REQUIRED

02-04-09

IMPERIAL REDEVELOPMENT AGENCY AGENDA ITEM

**SUBJECT: DISCUSSION/ACTION – ENVIRONMENTAL ANALYSIS
FORMER GAS STATION AT FIRST STREET AND IMPERIAL
AVENUE.**

- 1. AUTHORIZATION TO MOVE FORWARD WITH A PHASE II
ANALYSIS OF THE SITE.**

BACKGROUND/SUMMARY: The Agency has been focused on improving unsightly and blighted properties in the project area for the past two years. In September 2008 the Agency funded \$2,751 towards a Phase I analysis of the former gas station site at the intersection of First Street and Imperial Avenue through the authority of the Executive Director. A nonprofit project is desirous of utilizing the parcel for a future facility through an agreement with the Redevelopment Agency. The parcel has undergone landownership issues recently and the landowner is currently interested in donating the parcel for possible tax credits. Any future use, especially if the Agency is involved, will need environmental clearance. If no project moves forward, even demolition of the existing site will need clearances from possible environmental hazards. A Phase II analysis was determined to be needed on the parcel at a cost of \$8,895. Staff proposes that this study be funded by the Agency as a part of any assistance provided to encourage cleanup and development of this highly visible and critical parcel in the project area.

FISCAL IMPACT: Prior payment was made in the amount of \$2,751. A proposed additional payment of \$8,895 would total \$11,646 towards cleanup of the parcel. Funds are available in the RDA project account.

STAFF RECOMMENDATION:

Approve moving forward with Agency funding of environmental study.

MANAGER'S RECOMMENDATION:

MANAGER'S INITIALS _____

It is recommended that the Agency Board authorize staff to move forward with a Phase II Analysis on the former gas station site at First Street and Imperial Avenue.

MOTION:

SECONDED:

APPROVED ()

REJECTED ()

AYES:

DISAPPROVED ()

DEFERRED ()

NAYES:

ABSENT:

REFERRED TO:



Engineering And
Information Technology

December 19, 2008

Ms. Marlene Best
City of Imperial
420 S. Imperial Avenue
Imperial, CA 92251

**Proposal for Phase II Environmental Site Assessment
Old Gas Station Site
SEC First Street and Imperial Avenue
Imperial, California
*GSL Proposal No. L08-183E***

Dear Ms. Best:

GS Lyon Consultants, Inc. is pleased to submit this proposal to perform a Phase II Environmental Site Assessment (ESA) for property located at the southeast corner of First Street and Imperial Avenue (APN 064-204-002) adjacent to the northeast corner of the Imperial County Airport in southern Imperial, California. The subject site is currently occupied by an old gas and service station and tractor maintenance shop. It is our understanding that the site was occupied by a gas station from prior to 1949 to 1972 based on a Phase I ESA report prepared by GS Lyon in September 2008.

GS Lyon Consultants appreciates the opportunity to provide a proposal for professional environmental engineering services. A scope of work and cost estimate has been developed for a Phase II Environmental Site Assessment and is presented below.

SCOPE OF WORK

Our scope of work for Phase II ESA evaluations at the referenced site is to complete the activities listed below:

The scope of work will consist of sampling of subsurface soil and groundwater at locations of suspected releases of petroleum hydrocarbons (UST locations, piping, pumps, etc). The subsurface exploration can be accomplished using a strataprobe to take soil samples at selected intervals and to obtain groundwater samples. It is suggested that a minimum of four (4) borings be performed within the site area. Groundwater is typically encountered at a depth of 10 to 15 feet in the vicinity of the project site.

Sampling of the subsurface soil will be conducted at the surface and at 5 foot intervals until groundwater or refusal is encountered.

Approximately twelve (12) soil and four (4) groundwater samples will be taken for analysis for Total Petroleum Hydrocarbons (TPH) in the gas/diesel range by EPA Method 8015 and Benzene, Toluene, Ethylbenzene and Xylenes (BTEX) and MTBE by EPA Method 8260B. The analyses will be performed at a state certified laboratory.

Recommendations for additional services will also be provided, as necessary. Testing of materials or groundwater for pesticides, asbestos, or toxic chemicals except as specifically stated above is *not* included in the work scope.

COST AND SCHEDULE

The estimated cost for the outlined scope of work is \$8,895.00 which includes field exploration at three locations, sampling, analyses, and report preparation. It is estimated that the field exploration can be scheduled to start within two (2) weeks of your approval to proceed. Completion of our final report can be completed in a 2 to 3 week period. Should undue delay be incurred for this reason, we will forward you a preliminary report if requested and finalize our findings through an addendum letter.

A standard form agreement for our professional services is enclosed for execution with one original to be retained for you records. Our firm carries errors and omissions insurance in the amount of \$1,000,000.00; however, our standard limit of liability based on risk allocation shall not exceed the amount of \$15,000.00, or our fee, whichever is greater, unless negotiated otherwise. Our firm also maintains a minimum of \$1,000,000 for general liability and automobile insurance.

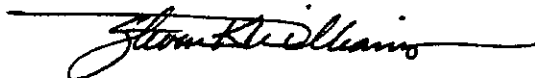
LIMITATIONS

- * The client should be aware that no environmental site assessment can wholly eliminate uncertainty regarding the potential for recognized environmental conditions in connection with a property. The intent of the assessment will be to reduce, but not eliminate uncertainty regarding the potential for recognized environmental conditions within reasonable limits of time and cost.
- * Our assessment of the site and surrounding areas will be conducted accordance with the *generally accepted environmental engineering standard of practice*, which exists in Imperial County, California at the time that the report is prepared. No warranty, express or implied, is made.

- * The sole purpose of the investigation and accompanying report is to assess the physical characteristics of the site with respect to the presence or absence in the environment of petroleum products or hazardous materials and substances as defined in the applicable state and federal environmental laws and regulations and to gather information regarding current and past usages resulting in adverse environmental conditions at the site.
- * The data presented in the report will be derived primarily from visual inspections, examination of public records and information in the public domain, informal interviews with individuals, and readily available information about the site. The passage of time, manifestation of latent conditions or occurrence of future events may require further exploration of the site, analysis of the data, and reevaluation of the findings, observations, and conclusions expressed in the report.
- * In preparing the report, GS Lyon Consultants, Inc. may rely upon and presume accurate certain information (or the absence thereof) about the site and adjacent properties provided by governmental officials and agencies, the Client, and others. Except as otherwise stated in the report, GS Lyon Consultants will not attempt to verify the accuracy or completeness of any such information.
- * The data report and the findings, observation, and conclusions expressed in the report are limited by the Scope of Services. The Scope of Services was defined by the requests of the Client, the time and budgetary constraints imposed by the Client, and the availability of access to the site.
- * Because of the limitations stated above, the findings, observations, and conclusions expressed by GS Lyon Consultants in the report are not, and should not be considered, an opinion concerning the compliance of any past or present owner or operator of the site with any federal, state or local law or regulation.
- * The report will be prepared on behalf of and for the exclusive use of the Client for the particular site identified in this proposal, and is subject to and issued in connection with the Agreement and the provisions thereof. This report should not be relied upon by any party other than the client and his/her designees without the express permission of GS Lyon Consultants, Inc.

We appreciate the opportunity to provide our professional services. If you have any questions regarding our work, please feel free to contact us at (760) 337-1100.

Respectfully,
GS Lyon Consultants, Inc.



Steven K. Williams, PG, CEG
Senior Engineering Geologist



Jeffrey O. Lyon, PE
Principal Engineer

TERMS FOR ENVIRONMENTAL CONSULTING SERVICES

THE AGREEMENT

This agreement is made by and between: **GS LYON CONSULTANTS, INC.**, hereinafter referred to as ENVIRONMENTAL CONSULTANT, and City of Imperial hereinafter referred to as CLIENT. This agreement between the parties consists of these TERMS, the attached PROPOSAL identified as L08-183E, dated December 17, 2008, and any exhibits or attachments noted in the PROPOSAL. Together, these elements will constitute the entire AGREEMENT superseding any and all prior negotiations, correspondence, or agreements either written or oral. Any changes to this AGREEMENT must be mutually agreed to in writing.

EXISTING CONDITIONS

Client will make available to Consultant all information regarding existing and proposed conditions of the site. Client agrees to provide a representative at the jobsite to supervise and coordinate the job when required by the Consultant and upon 24 hours notice. The information shall include, but not be limited to, plot plans, topographic surveys, hydrographic data, and previous soil data including borings, field or laboratory tests and written reports. Client will immediately transmit to Consultant any new information which becomes available or any change in plans.

Consultant shall not be liable for any incorrect advise, judgment, or decision based on any inaccurate information furnished by Client, and Client will indemnify Consultant against claims, demands, or liability arising out of or contributed to by such information.

PROJECT SITE

- (a) Client shall indicate to Consultant the property lines and is responsible for accuracy of markers.
- (b) Client shall grant free access to the site for all necessary equipment and personnel. The Client shall notify any and all possessors of the project site, whether they be lawfully or unlawfully in possession, that Client has granted Consultant free access to the project site, and Client shall secure permission (and any permits) necessary to allow Consultant free access to the project site at no charge to Consultant unless specifically agreed to otherwise in the letter of proposal attached hereto.
- (c) Client shall locate for Consultant and shall assume responsibility for the accuracy of his representations as to the locations of all underground utilities and installations. Consultant will not be responsible for damage to any such utilities or installation not so located, and any such damage may, at Consultant's option, be repaired by Consultant and billed at cost plus 15% to Client.

BILLING AND PAYMENT

CLIENT will pay ENVIRONMENTAL CONSULTANT in accordance with procedures indicated in the PROPOSAL and its attachments. Invoices will be submitted to CLIENT by ENVIRONMENTAL CONSULTANT, and will be due and payable upon presentation. If CLIENT objects to all or any portion of any invoice, CLIENT will so notify ENVIRONMENTAL CONSULTANT in writing within fourteen (14) calendar days of the invoice date, identify the cause of disagreement, and pay when due that portion of the invoice not in dispute. The parties will immediately make every effort to settle the disputed portion of the invoice. In the absence of written notification described above, the balance as stated on the invoice will be paid. Invoices are delinquent if payment has not been received within thirty (30) days from date of invoice. CLIENT will pay an additional charge of one percent (1.5%) per month (or the maximum percentage allowed by law, whichever is lower) on any delinquent amount, excepting any portion of the invoiced amount in dispute and resolved in favor of CLIENT. Payment thereafter will first be applied to accrued charges and then to the principal unpaid amount. All time spent and expenses incurred (including any attorney's fees) in connection with collection of any delinquent amount will be paid by CLIENT to ENVIRONMENTAL CONSULTANT per ENVIRONMENTAL CONSULTANT's current fee schedules. In the Event CLIENT fails to pay ENVIRONMENTAL CONSULTANT within sixty (60) days after invoices are rendered, CLIENT agrees that ENVIRONMENTAL CONSULTANT will have the right to consider the failure to pay the ENVIRONMENTAL CONSULTANT's invoice as a breach of the AGREEMENT and services may be terminated.

LIMITATION OF LIABILITY

For any damage on account of any error, omission, or other negligence, our liability will be limited to a sum not to exceed \$50,000.

FIDUCIARY RESPONSIBILITY

CLIENT agrees that CONSULTANT has been engaged to provide technical professional services only, and that CONSULTANT does not owe a fiduciary responsibility to CLIENT.

TERMINATION

The AGREEMENT may be terminated by either party seven (7) days after written notice in the event of any breach of any provision of this AGREEMENT or in the event of substantial failure of performance by the other party, or if CLIENT suspends the work for more than three (3) months. In the event of termination, ENVIRONMENTAL CONSULTANT will be paid for services performed prior to the date of termination plus reasonable termination expenses including, but not limited to, the cost of completing analyses, records, and reports necessary to document job status at the time of termination.

DISPUTES RESOLUTION

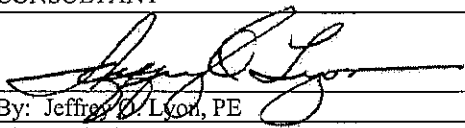
All claims, disputes, and other matters in controversy between ENVIRONMENTAL CONSULTANT and CLIENT arising out of or in any way related to this AGREEMENT will be submitted at "ALTERNATIVE DISPUTE RESOLUTION" (ADR) before and as a condition precedent to other remedies provided by law. If and to the extent CLIENT and ENVIRONMENTAL CONSULTANT have agreed on methods for resolving such disputes, then such methods will be set forth in the "Alternative Dispute Resolution Agreement" which, if attached, is incorporated into and made a part of this AGREEMENT. If no specific ADR procedure is set forth in this AGREEMENT, then it shall be understood that the parties shall submit disputes to mediation as a condition precedent to litigation. If a dispute at law arises from matters related to the services provided under this AGREEMENT and that dispute requires litigation instead of ADR as provided above then:

- (1) the claim will be brought against the client or ENVIRONMENTAL CONSULTANT, not individual professionals, and tried in judicial jurisdiction of the court of the county where ENVIRONMENTAL CONSULTANT's principal place of business is located and CLIENT waives the right to remove the action to any other county or judicial jurisdiction, and
- (2) the prevailing party will be entitled to recovery of all reasonable costs incurred, including staff time, court costs, attorney's fees, and other claim related expenses.

GOVERNING LAW AND SURVIVAL

The law of the State of California will govern the validity of these TERMS, their interpretation and performance. If any of the provisions contained in this AGREEMENT are held illegal, invalid, unenforceable, or which shall void professional liability insurance, the enforceability of the remaining provisions will not be impaired. Limitations of liability and indemnities will survive termination of this AGREEMENT for any cause.

The parties have read the forgoing, understand completely the terms, and willingly enter into this AGREEMENT which will become effective on the date signed below by CLIENT.

CLIENT	GS LYON CONSULTANTS, INC. CONSULTANT
By: _____	 By: Jeffrey D. Lyon, PE
Title: _____	Title: Principal Engineer
Date: _____	Date: 12/19/08